

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>MORTGAGE ELECTRONIC RECORDING SYSTEMS, INC.,</b>	)	
	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 04-cv-0857-MJR</b>
	)	
<b>BARBARA L. HANEBRINK,</b>	)	
<b>and RICHARD HANEBRINK,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM and ORDER**

**REAGAN, District Judge:**

Plaintiff filed this suit in November 2004 and served both Defendants in December 2004. On April 26, 2005, this Court issued a Notice of Impending Dismissal, clearly warning Plaintiff that the case would be dismissed for failure to prosecute unless action was taken within 20 days (i.e., by May 16, 2005). Four more months passed without any action being taken by Plaintiff.

On September 21, 2005, the Court dismissed the case for want of prosecution, under **FEDERAL RULE OF CIVIL PROCEDURE 41(b)**. Dismissal was made *without* prejudice.

By motion filed two days later, Plaintiff asks the Court to vacate the dismissal Order. Plaintiff claims to have not been aware of the Notice of Impending Dismissal. However, the Court's electronic case filing system plainly shows that Plaintiff's counsel was notified at 11:15 a.m. on April 26, 2005 of the issuance of the Notice of Impending Dismissal.

Plaintiff's counsel also advises the Court that "Defendant" (she does not specify which of the two named Defendants) filed a Chapter 13 bankruptcy on January 28, 2005. Plaintiff never advised the Court of that fact until *after* this case was dismissed.

Moreover, assuming that bankruptcy was filed by both Defendants and is still

pending, the resulting automatic stay would prevent the Court from proceeding on the merits of Plaintiff's claims against Defendants. It would not preclude the Court from dismissing Plaintiff's claims for want of prosecution. Furthermore, the Court notes that its dismissal was without prejudice.

For all these reasons, the Court **DENIES** Plaintiff's September 23, 2005 motion to vacate dismissal (Doc. 8).

**IT IS SO ORDERED.**

**DATED this 26<sup>th</sup> day of September, 2005.**

**s/ Michael J. Reagan**  
**MICHAEL J. REAGAN**  
**United States District Judge**